

## CENTRAL ADMINISTRATIVE TRIBUNAL

## PATNA BENCH

O. As. No. 523/05, 825/05, 68/06 & 104/06  
 [Patna, this Friday, the 9<sup>th</sup> Day of July, 2010]

## C O R A M

HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, MEMBER [J].

.....

1. OA No. 523 of 2005

Ram Vinay Dwivedi, S/o Late Ram Janam Dwivedi, working under Sr. Postmaster, Head Post Office, Muzaffarpur, R/o village -Madanpur, P.O.: Sisawa via. Rampur, P.S.: Kalyanpur, District - East Champaran, and 20 [Twenty] other applicants.

.....APPLICANTS.

By Advocate :- Shri M.P.Dixit.

Vs.

1. The Union of India through the Secretary, Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, New Delhi.
2. The Director General, Ministry of Communication, Department of Posts, Dak Bhavan, New Delhi.
3. The Chief Postmaster General, Bihar Circle, Patna.
4. The Postmaster General, Northern Region, Muzaffarpur.
5. The Director of Postal Services, Muzaffarpur.
6. The Superintendent, Postal Store Depot, Muzaffarpur.
7. The Senior Post Master, H.O. Muzaffarpur.

.....RESPONDENTS.

By Advocate :- Shri S.K.Tiwary, ASC.

2. OA No. 825 of 2005

Sanjay Kumar Singh, S/o Shri Kaushal Kumar Singh, R/o Hathiya Kan Sarai, Post Sarai, District - Patna, and 22 [Twenty Two] other applicants.

.....APPLICANTS.

By Advocate :- Shri M.P.Dixit.

Vs.

1. The Union of India through the D.G., Department of Posts, New Delhi.

2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services, O/o the Chief Postmaster General, Patna.
4. The Chief Postmaster General, Bihar Circle, Patna.
5. The Director of Accounts [Postal], Exhibition Road, Patna.

.....RESPONDENTS.By Advocate :- Shri B.K.Prasad, ASC.**3. OA No. 68 of 2006**

Sunil Prasad, S/o Shri Sudama Prasad, R/o village – Satbhirwa, PO & PS – Majhauria, District – West Champaran and 24 [Twenty Four] other applicants.

.....APPLICANTS.By Advocate :- Shri J.K.Karni.

Vs.

1. The Union of India through the Secretary-cum-D.G., Department of Posts, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Post Master General, Northern Region, Muzaffarpur.
4. The Superintendent of Post Offices, Champaran Division, Motihari.

.....RESPONDENTS.By Advocate :- Shri S.C.Jha, ASC.**4. OA No. 104 of 2006**

Vijay Kumar Khatri, S/o Late Ram Nath Arya, R/o mohalla – Panch near – Urdu School, PS – Jahamabad, at present working as Night Guard at Mahendru, Post Office, Patna and 2 [Two] other applicants.

.....APPLICANTS.By Advocate :- Shri J.K.Karni.

Vs.

1. The Union of India through the Secretary-cum-D.G., Department of Posts, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services, Bihar Circle, Patna.
4. The Superintendent of Post Offices, Patna Division, Patna.

.....RESPONDENTS.

By Advocate :- Shri S.C.Jha, ASC.

O R D E R

Justice Syed Md. Mahfooz Alam, M[J] :- In all the above mentioned cases common question of facts and law are involved and as such, the same were disposed of by a common judgment passed by Division Bench of this Tribunal but as there was difference of opinion between the Member [Judicial] and Member [Administrative], the matter was referred to the third Member, headed by me.

2. The brief facts of the case are as follows.

3. The applicants were appointed as casual labourers on different dates and were granted temporary status of Group 'D' employees from different dates and are continuing to hold the post with same benefits as were available to a permanent Group 'D' employee. In view of the judgment of the Hon'ble Supreme Court a Scheme, namely, Casual Labourers [Grant of Temporary Status & Regularisation] was drawn up by the Department of Posts in consultation with Ministry of Law, Finance & Personnel, having assent of the President of India according to which the casual labourers in employment as on 29.11.1989 and who continued to be in employment on the date the Scheme came into force and had rendered continuous service of at least one year would be conferred temporary status and after rendering three years continuous service after conferment of temporary status they would be treated at par with temporary Group 'D' employees for the purpose of contribution of GPF, etc. The Scheme was dated 12.04.1991. Then on 30.11.1992 further modification was made in the Scheme and the same was circulated. As per the

said modification casual labourers on completion of three years of continuous service with temporary status shall be treated at par with Group 'D' employees and would be entitled to such benefits as are admissible to Group 'D' employees on regular basis. They will be treated at par with Group 'D' employees w.e.f. the date they complete three years of service in temporary status. They will also be entitled to benefits admissible to temporary Group 'D' employees including contribution towards GPF. The case of the applicants is that as per the above mentioned Scheme and after completing three years of continuous service with temporary status, they have been granted status at par with Group 'D' employees from various dates as mentioned in the OAs and since then they were enjoying the facility of GPF deduction. In the meantime, New Pension Scheme came into force w.e.f. 26.04.2004 and with the introduction of the New Pension Scheme the authorities stopped deducting the amount of GPF of the applicants from different dates since the year 2005. The New Pension Scheme circulated through OM of DOPT dated 26.04.2004 was forwarded to the Department of Posts vide letters dated 29.04.2005 & 02.09.2005. The said New Pension Scheme and the letters mentioned above, through which the New Pension Scheme was implemented and the order of stoppage of GPF deduction of the applicants was issued, are under challenge and a prayer has been made that the same may be quashed and the respondents may be directed to continue deducting GPF amount from the applicants.

4. The case of the respondents is that the grant of temporary status and regularisation of casual labourers circulated by the department vide letter dated 12.04.1991 has been reviewed and modified in the light of the

introduction of the New Pension Scheme in respect of the persons appointed to Central Government service on or after 01.01.2004 in consultation with the DOPT. Their further case is that as there is no provision of GPF in the New Pension Scheme, the question of deduction of GPF from the salary of the applicants does not arise and the same cannot be allowed to continue in view of the New Pension Scheme and that is why the department stopped deduction of GPF contribution from the salary of the applicants whose service as Group 'D' employee has not been regularised as yet.

5. From perusal of the record it appears that the matter was heard by the Division Bench comprising of Hon'ble Mrs. Justice Rekha Kumari, Member [J] and Hon'ble Mr. Sudhir Kumar, Member [A] and both the Members passed dissenting judgment. As per the conclusion arrived at by the Hon'ble Member [J] the applicants[except the applicant – Pawan Kumar] have got good case in their favour and as such, the Hon'ble Member [J] allowed the applications, except the OA filed by the applicant, Pawan Kumar. However, the Hon'ble Member [A] disagreed with the view of the Hon'ble Member [J] and dismissed the applications. Thus, the only point for consideration before me is whether the view expressed by the Hon'ble Member [J] is correct or the view taken by the Hon'ble Member [A] is correct.

6. From perusal of the judgment of the Hon'ble Member [J] it appears that the finding of the Hon'ble Member [J] is based on the decision of the Lucknow Bench of CAT dated 09.09.2009, passed in OA 44 of 2006, with several other OAs. It appears that before the Lucknow Bench also several OAs were filed to quash the DOPT OM dated 26.04.2004 on the ground that the

New Pension Scheme cannot apply on those casual labourers having temporary status who have been appointed earlier than 01.01.2004. I am also of the view that the instant OAs are fully covered by the judgment of Lucknow Bench, passed in OA 44 of 2006, and there is no reasonable ground for passing a dissenting judgment differing with the view taken by the Lucknow Bench. This is also against the judicial norms. Moreover, perusal of the Scheme dated 26.04.2004, read with the letter no. 4-28/2003-Pen Govt. of India, Ministry of Communication, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi dated 17.12.2004 shows that the New Pension Scheme is applicable to those employees who were appointed on or after 01.01.2004. Admittedly, the applicants have acquired temporary status much before 01.01.2004 and as such, I am in conformity with the view of the Lucknow Bench as well as Member [J] of this Bench that the New Pension Scheme will not be applicable to the applicants who have acquired temporary status of Group 'D' employees much before 01.01.2004. The contention of the Hon'ble Member [A] that since the applicants have not been regularised on Group 'D' post as yet as such, the New Pension Scheme will be applicable upon them is not a correct view as the conferment of the temporary status to casual labourers and grant of other benefits like deduction of provident fund has no connection with the regularisation of services of casual labourers having temporary status. To support my view I would refer to paragraphs 7 & 8 of the circular dated 12.04.1991 which reads as follows :-

*"7. Conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as a regular Group 'D' employee within any fixed time frame. Appointment to Group D vacancies will continue to be done as*

*per the extant recruitment rules, which stipulate preference to eligible ED employees.*

8. *After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary group D employee for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Govt. Servants of this Department."*

7. Thus, if both the paragraphs are read together it will establish that although the casual labourers after conferment of temporary status have no right to be appointed as regular group 'D' employee within any fixed time but they are entitled to be treated at par with Group 'D' employee for the purpose of contribution to General Provident Fund, etc. and this right cannot be taken away by any subsequent change and, therefore, I hold that the view taken by Member [J] is correct.

8. On the basis of the discussions made above, I fully agree with the view taken by the Hon'ble Member [J] and hold that she has rightly allowed the applications [except the application of applicant, Pawan Kumar]. Accordingly, this reference is decided.

[Syed Md. Mahfooz Alam]  
Member [Judl.]

skj